

AGREEMENT

THIS AGREEMENT dated this 24th day of February, 2004, by and between LEON COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "County" and DES of Florida, LLC, hereinafter referred to as the "Contractor."

WHEREAS, the County has determined that it would be in the best interest of the citizens of Leon County, Florida, that the County be able to utilize the services of private persons when such services cannot be reasonably provided by the County; and

WHEREAS, the County has determined that it would be better to contract for these services than to hire the necessary personnel to satisfy the needs of the County; and

WHEREAS, in order to secure the lowest cost for these services, the County has sought and received competitive proposals from contractor for such services.

NOW, THEREFORE, the parties hereto agree as follows:

1. SERVICES TO BE PROVIDED

The Contractor hereby agrees to provide the following services to the County:

Site hosting and licensing of the IMARCS system and use thereof to include all of the features enumerated in Exhibit A attached hereto for the Leon County Tourist Development Council.

The Contractor agrees to designate a project representative to serve on a Website Coordinating Committee to be comprised of representatives from the County and other contractors or groups so authorized by the County.

2. WORK

Any work to be performed shall be upon the written request of the County Administrator or his representative, which request shall set forth the commencing date of such work and the time within which such work shall be completed.

The performance of Leon County of any of its obligations under the purchase order or agreement shall be subject to and contingent upon the availability of funds lawfully expendable for the purposes of the purchase order or agreement for the current and any future periods provided for within the bid specifications.

3. TIME

The agreement shall be for a period of three (3) years, commencing on March 1, 2004, and shall continue until February 28, 2007. After the initial three (3) year period, at the discretion of the County, the agreement may be extended for no more than two additional one (1) year periods. Such one (1) year extensions will be automatic unless the County provides written notice of non-renewal to the Contractor no less than thirty (30) days prior to the expiration date of the then current period.

4. CONTRACT SUM

The Contractor agrees that for the performance of the services as outlined above, it shall be remunerated by the County according to the payment schedule contained in Exhibit A proposal for a total sum of \$ 29,400.00 for the initial year. Each year thereafter the annual license fee shall be \$10,000 with a monthly service fee of \$450.00.

5. PAYMENTS

The County will make such payments within thirty (30) days of submission and approval of invoice for services.

6. STATUS

The contractor at all times relevant to this Agreement shall be an independent contractor and in no event shall the Contractor nor any employees or sub-contractors under it be considered to be employees of Leon County.

7. LICENSES

The Contractor shall be responsible for obtaining and maintaining his city or county occupational license and any licenses required pursuant to the laws of Leon County, the City of Tallahassee, or the State of Florida. Should the Contractor, by reason of revocation, failure to renew, or any other reason, fail to maintain his license to operate, the contractor shall be in default as of the date such license is lost.

8. ASSIGNMENTS

This Agreement shall not be assigned or sublet as a whole or in part without the written consent of the County nor shall the contractor assign any monies due or to become due to him hereunder without the previous written consent of the County.

9. HOLD HARMLESS

The Contractor agrees to indemnify and hold harmless the County from all claims, damages, liabilities, or suits of any nature whatsoever arising out of, because of, or due to the breach of this agreement by the Contractor, its delegates, agents or employees, or due to any act or occurrence of omission or commission of the Contractor, including but not limited to costs and a reasonable attorney's fee. The County may, at its sole option, defend itself or allow the Contractor to provide the defense. The Contractor acknowledges that ten dollars (\$10.00) of the amount paid to the Contractor is sufficient consideration for the Contractor's indemnification of the County.

10. MINORITY BUSINESS ENTERPRISE (M/WBE) PARTICIPATION

The Contractor shall meet or exceed the M/WBE participation levels stated in the M/WBE Participation Statement included as part of the bid response for this project, except when the County Good Faith Committee approves an exception.

Any "Good Faith Statement" provided by a Contractor shall follow the requirements of the Florida Statutes, and must demonstrate through documentation that every reasonable effort has been made to achieve the requested percentage.

For those M/WBE firms listed in their bid, Contractors shall be responsible for securing proof of their M/WBE certification and providing copies to the County M/WBE Office.

Also required is a monthly reporting system of the work done by and payments made to certified minority business enterprises as a part of this project. The reports shall detail each invoice submitted to the County and a break down of payments to all subcontractors therein by M/WBE classification.

11. AUDITS, RECORDS, AND RECORDS RETENTION

The Contractor agrees:

- a. To establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices, which sufficiently and properly reflect all revenues and expenditures of funds provided by the County under this agreement.

- b. To retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this agreement for a period of five (5) years after termination of the agreement, or if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this agreement.
- c. Upon completion or termination of the agreement and at the request of the County, the Contractor will cooperate with the County to facilitate the duplication and transfer of any said records or documents during the required retention period as specified in paragraph 1 above.
- d. To assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, state, or other personnel duly authorized by the County.
- e. Persons duly authorized by the County and Federal auditors, pursuant to 45 CFR, Part 92.36(l)(10), shall have full access to and the right to examine any of provider's agreement and related records and documents, regardless of the form in which kept, at all reasonable times for as long as records are retained.
- f. To include these aforementioned audit and record keeping requirements in all approved subcontracts and assignments.

12. MONITORING

To permit persons duly authorized by the County to inspect any records, papers, documents, facilities, goods, and services of the provider which are relevant to this agreement, and interview any clients and employees of the provider to assure the County of satisfactory performance of the terms and conditions of this agreement.

Following such evaluation, the County will deliver to the provider a written report of its findings and will include written recommendations with regard to the provider's performance of the terms and conditions of this agreement. The provider will correct all noted deficiencies identified by the County within the specified period of time set forth in the recommendations. The provider's failure to correct noted deficiencies may, at the sole and exclusive discretion of the County, result in any one or any combination of the following: (1) the provider being deemed in breach or default of this agreement; (2) the withholding of payments to the provider by the County; and (3) the termination of this agreement for cause.

13. TERMINATION

Leon County may terminate this Agreement without cause, by giving the Contractor thirty (30) days written notice of termination. Either party may terminate this Agreement for cause by giving the other party hereto thirty (30) days written notice of termination. The County shall not be required to give Contractor such thirty (30) day written notice if, in the opinion of the County, the Contractor is unable to perform its obligations hereunder, or if in the County's opinion, the services being provided are not satisfactory. In such case, the County may immediately terminate the Agreement by mailing a notice of termination to the Contractor.

14. PUBLIC ENTITY CRIMES STATEMENT

In accordance with Section 287.133, Florida Statutes, Contractor hereby certifies that to the best of his knowledge and belief neither Contractor nor his affiliates has been convicted of a public entity crime. Contractor and his affiliates shall provide the County with a completed public entity crime statement form no later than January 15 of each year this agreement is in effect. Violation of this section by the Contractor shall be grounds for cancellation of this agreement by Leon County.

15. PROHIBITION AGAINST CONTINGENT FEES

The Contractor warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working for the Contractor any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement.

16. NON-WAIVER

Failure by the County to enforce or insist upon compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement terminated shall not constitute a general waiver or relinquishment of the same, or of any other terms, conditions or acts; but the same shall be and remain at all times in full force and effect.

17. REVISIONS

In any case where, in fulfilling the requirements of this agreement or of any guarantee, embraced in or required thereby it is necessary for the Contractor to deviate from the requirements of the bid, Contractor shall obtain the prior written consent of the County.

18. VENUE

Venue for all actions arising under this agreement shall lie in Leon County, Florida.

19. CONSTRUCTION

The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida.

WHERETO, the parties have set their hands and seals effective the date whereon the last party executives this Agreement.

CONTRACTOR

WITNESS: _____ BY: _____
President

WITNESS: _____ DATE _____

(CORPORATE SEAL)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____.

By _____ of _____
(Name of officer or agent, title of officer or agent) (Name of corporation acknowledging)

a _____ corporation, on behalf of the corporation. He/she is personally
(State or place of incorporation)

known to me or has produced _____ as identification.
(type of identification)

Signature of Notary

Print, Type or Stamp Name of Notary

Title or Rank

Serial Number, If Any

LEON COUNTY, FLORIDA

BY: _____
Jane G. Sauls, Chairman
Board of County Commissioners

DATE: _____

ATTEST:
BOB INZER, CLERK OF THE COURT
LEON COUNTY, FLORIDA

By: _____

APPROVED AS TO FORM:
LEON COUNTY ATTORNEY'S OFFICE

By: _____
Herbert W.A. Thiele, Esq.
County Attorney

DRAFT



"Professional Solutions for Industry"

Scope of Services RESPONSE

Invitation To Negotiate for Website Services for Leon County Tourist Development Council
Proposal Number: BC-00-00-03-48

EXHIBIT A

Cost of services

| Services | Annual Fees | Monthly Fees |
|---|--------------|--------------|
| Site Set Up Fee: | \$7,000.00 | N/A |
| Initial License & Database fee: | \$17,000 *** | N/A |
| Monthly usage Fee: \$450. for up to 25,000 mailings per month | \$5,400 | \$450.00 |
| DESF/IMARCS Training: 1 four hour session | N/C | N/A |
| TOTAL | \$29,400.00 | |

*** Recurring Annual License fee: \$10,000.

Professional Services

| | |
|---------------------------------------|--------------|
| Graphic Design & Web Page Development | \$65.00/HR |
| Programming Services | \$108.75/HR |
| Project Management | \$135.00/HR. |
| Marketing Consultation | \$135.00/HR |
| Business Consulting | \$155.00/HR |

QUALIFICATIONS QUESTIONNAIRE RESPONSE

Attachment # 1
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**Invitation To Negotiate for Website Services for Leon County Tourist Development Council
Proposal Number: BC-00-00-03-48**

Cost and Associated fees for IMARCS Website and Database Services

| Estimated Cost for redesign of Website and Database | |
|---|---|
| Website re-design: | \$13,500.00 |
| IMARCS License and Database Setup fee: | \$17,000.00 |
| Recurring Annual License fee: (Includes version upgrades and System Maintenance) | \$10,000.00 |
| Monthly Hosting & email Usage Fee: (includes up to 25,000 email per month) | \$450.00 |
| Training Cost – 2 days (four hour sessions) | INCLUDED |
| Included in the Monthly Fee: <ul style="list-style-type: none"> • Database Management Tools • Emails Database Management System • Email Creation & Editing tools • Survey Creation & Editing tools • Web Page Creation & Editing tools • Database Reporting tools (standard & Custom Reports) • Refer-a-Friend tool • Sweepstakes Drawing tool • People search tool • Referral URL tool • Random Drawing tool • Database Export tools • Unlimited Surveys • System Back-up and Disaster Recovery • Initial Training – 8 hours | INCLUDED INCLUDED INCLUDED INCLUDED INCLUDED INCLUDED INCLUDED INCLUDED INCLUDED INCLUDED INCLUDED INCLUDED INCLUDED INCLUDED INCLUDED |
| Website Functionality <ul style="list-style-type: none"> • Events Calendar • Site Search or Detailed Site Map • Website Media Room • Interactive Map on of Tallahassee and Surrounding areas • Local real-time Weather • Real-time website traffic reports • Email bar-coded discount coupons | INCLUDED INCLUDED INCLUDED INCLUDED INCLUDED INCLUDED INCLUDED INCLUDED |

Attachment # 1
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**Contract Terms for Standard IMARCS License for
Leon County Tourist Development Council**

1. **Site Design:** We will design the initial setup of the IMARCS system. Following activation, you will be able to make design modifications by using the ImarcsGroup.com "Control Panel," which allows you to keep your web pages, email newsletters, surveys and forms current and to access the management tools. If you request us to make these changes for you beyond the normal scope of customer service, current prevailing rates will apply.
2. **Additions & Site Upgrades:** From time-to-time, additions, improvements, enhancements, new features, new content, new e-tools, and new services will be incorporated into IMARCS at no additional cost. Other enhancements or features including those that utilize third party technology or content may also be available at an additional cost. These paid enhancements will be optional.
3. **Annual License Fees:** Your initial License Fee is non-refundable and is due and payable upon the signing of this Agreement. An Annual License Renewal fee of \$10,000.00 will be charged on each subsequent yearly anniversary date.
4. **Feature PAKs:** Additional features are available either on an ala-carte or package basis. Payment for features and Feature PAKs are due and payable upon contract signing and on each subsequent anniversary date.
5. **Basic IMARCS Training Fee:** Your Basic IMARCS Training Fee is due and payable upon signing this Agreement and you are entitled to receive up to 4 hours of time at our facility to learn the basic use of IMARCS. Basic web training fees are non-refundable. If you are interested in maximizing your Internet marketing potential, inquire about our training classes on Internet Marketing.
6. **Monthly Usage Fees:** Usage fees are calculated based on a tiered price structure as advertised in the current Standard IMARCS Price List. The Tier level at which you participate will be calculated based upon the number of outbound emails sent on a monthly basis. If you exceed the number of allotted email messages for your Tier level you will be charged an additional fee (as defined in the Standard IMARCS Price List) for each email over the allotment.
7. **Customer Support:** Customer support is available by email at support@imarcsGroup.com.
8. **Website Activation:** We will usually build and activate your IMARCS site within 30 days of you making payment.
9. **Term:** The contract term is 12 months and is auto-renews for subsequent 12-month terms unless canceled in writing 30 days before the end of the term. In the event that the service is terminated, ImarcsGroup.com will export your registered user data to a flat file in comma-delimited format. The fee for exporting the data will be \$200 OR eight (.08) cents per record, whichever is highest.
10. **Links and Email:** We allow you to link your IMARCS web pages to other Web sites and we allow you to send email to prospects and customers in your IMARCS database. However, we are not responsible for any information on other sites, nor are we liable for any email content, offers, promotions, or commitments and we expressly prohibit links or emails to or about sites or services that relate to pornography or terrorist material and we expressly forbid the action of SPAM mail.
11. **Powered By:** You agree to allow the placement of message containing text and a URL link at the bottom of all of your outbound email messages, surveys, and web pages that are generated by IMARCS that says: "Powered by IMARCS".
12. **Indemnification:** By becoming an IMARCS customer, you have granted us the right to place information you have given us on your site and other sites and you agree to indemnify and hold us harmless against any and all claims or causes of actions that may arise with respect to the information, against us or our affiliates.
13. **Warranties:** All information on your IMARCS site and service is provided to you and end users on an "as is" "as available" basis without warranty of any kind either expressed or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, and non-infringement. Use of your site and the IMARCS Internet Marketing System is at the risk of you and the end user. We do not warrant that use of your site or IMARCS will be uninterrupted or error-free. As a service to you, the people who visit your site, and the people you send email too, we permit you to publish information regarding yourself and your services. We do not recommend or endorse you, and we are not responsible for the accuracy or reliability of any opinion, advice, or statement made by you or otherwise through your site. It is your responsibility to ensure the accuracy, completeness, or usefulness of any information or content available on or through your site.
14. **Limitation of Liability:** We specifically disclaim any liability, whether based in contract, tort, strict liability or otherwise, for any actual, direct, indirect, incidental, consequential, or special damages arising out of or in any way connected with access to or use of your site and IMARCS, even if we have been advised of the possibility of such damages, including liability in connection with mistakes or omissions in, or delays in transmission of, information to or from the user, interruptions in telecommunications connections to the site or viruses, whether caused in whole or in part by negligence, acts of God, telecommunications failure, theft or destruction of, or unauthorized access to the Web site, software, or related information, records or programs and whether in contract or tort.
15. **Trademarks:** ImarcsGroup.com LLC, its successors and assigns own and have the exclusive use of the ImarcsGroup.com IMARCS service, trademark and logo. Unauthorized use of any ImarcsGroup.com Inc service, trademark or logo is a violation of federal and state trademark laws.
16. **Modifications to Policies:** We reserve the right to modify the policies governing IMARCS at any time. Modifications will be posted on the Control Panel for your site. You are deemed to be apprised of and bound by any changes to these policies.
17. **Governing Law:** IMARCS is owned and operated by ImarcsGroup.com LLC from its offices within the United States of America. ImarcsGroup.com Inc makes no representation that the information in your site is appropriate or available for use in other locations, and access to your site from territories where its contents may be illegal is prohibited. Those who choose to access your site from other locations do so on their own initiative and are responsible for compliance with applicable local laws. Any claims relating to the information available on your site will be governed by the laws of the State of Florida, USA, excluding the application of its conflicts of law rules. This agreement is assignable by ImarcsGroup.com LLC only.